

REMARKS

Reconsideration and withdrawal of the rejections to the application is respectfully requested in view of the amendments, remarks, and comments herein.

I. STATUS OF THE CLAIMS

Claims 17-49 are now pending. Claims 1-16 have been cancelled, and claims 17-49 are added, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

No new matter is added.

It is submitted that the claims herewith and the claims as originally presented are and were in full compliance with the requirements of 35 U.S.C. §§101, 102, 103 and 112. The addition of the claims herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but rather the addition of the claims is made simply for clarification and to round out the scope of protection to which Applicants are entitled. Support for the new claims is found throughout the specification and from the originally-filed claims.

II. THE OBJECTION TO THE SEQUENCE LISTING IS OVERCOME

Acceptance of the enclosed paper copy and computer readable form of the sequence listing is respectfully requested.

It is believed that the Sequence Listing now conforms to the requirements of 37 C.F.R. §1.823(b). The Statements required by 37 C.F.R. §1.821(f) and (g) are set forth below.

Pursuant to 37 C.F.R. §1.821(f), the undersigned hereby states that the content of the paper copy and computer readable copy of the Sequence Listing submitted herewith in accordance with 37 C.F.R. §1.821(c) and (e), respectively, are the same.

Pursuant to 37 C.F.R. §1.821(g), the undersigned attorney of record hereby states that this submission, filed in accordance with 37 C.F.R. §1.821(g), does not contain new matter.

In view of the amendments, remarks and enclosures herewith, it is respectfully submitted that the application complies with the requirements for computer readable disclosure of the biological sequences under 37 C.F.R. §1.821-1.825. Consequently, reconsideration and withdrawal of the objection to the Sequence Listing is respectfully requested.

III. THE DOUBLE PATENTING REJECTION IS OVERCOME

Claims 1-16 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-24 of U.S. Patent No. 6,159,477. The rejection is respectfully traversed.

Claims 1-16 have been cancelled without prejudice, rendering the rejection moot. Consequently, reconsideration and withdrawal of the double patenting rejection is respectfully requested.

IV. THE § 112 REJECTIONS ARE OVERCOME

Claims 1-16 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The rejection is respectfully traversed.

Claims 1-16 have been cancelled without prejudice, rendering the rejection moot. Consequently, reconsideration and withdrawal of the §112 rejection is respectfully requested.

V. THE ART REJECTIONS ARE OVERCOME

Claim 16 was rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Limbach et al. (Journal of Virology, 1994) and by Remond et al. (Virus Research, 1995).

Claim 16 was also rejected under 35 U.S.C. §102(a) as allegedly being anticipated by Remond et al. (Journal of General Virology, Jan. 1996).

Additionally, claims 1-6, 8, 9, 11, 12, 15 and 16 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by, or in the alternative, under 35 U.S.C. 103(a) as allegedly obvious over Haanes et al. (U.S. Patent No. 5,753,235 or 5,804,197).

The rejections are respectfully traversed, and will be addressed collectively.

Claims 1-16 have been cancelled without prejudice, rendering the rejections moot. Consequently, reconsideration and withdrawal of the rejections under sections 102 and 103 are respectfully requested.

REQUEST FOR INTERVIEW

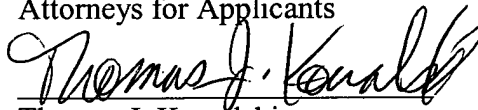
If any issue remains as an impediment to allowance, an interview with the Examiner is respectfully requested. The Examiner is respectfully requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

CONCLUSION AND REQUEST FOR INTERVIEW

In view of the remarks and amendments herewith, the application is in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance, or an interview at a very early date with a view to placing the application in condition for allowance, are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

A handwritten signature in cursive script, appearing to read "Thomas J. Kowalski", written over a horizontal line.

Thomas J. Kowalski
Reg. No. 32,147
(212) 588-0800

VERSION WITH MARKINGS TO SHOW CHANGES MADE

Page 9, lines 18-19:

SEQ ID No. 1 and 31

Complete sequence of the CHV ORF1 →
ORF5 region depicted in Figure 1